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C O N F I D E N T I A L SECTION 01 OF 04 BANGKOK 007594

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SUBJECT: GOVERNMENT SCRAMBLING TO BUILD A CASE AGAINST
THAKSIN

REF: A. BANGKOK 7484 (CAPITAL CONTROLS)

[1](#)B. BANGKOK 1301 (SNAP ELECTION)

[1](#)C. BANGKOK 788 (THE GREAT SALE)

[1](#)D. 05 BANGKOK 7529 (LUNCH WITH THAKSIN)

[1](#)E. 03 BANGKOK 2832 (MEETING WITH CHAVALIT)

Classified By: Political Officer David R. Greenberg, reason: 1.4 (b) and (d).

SUMMARY

[1](#)1. (C) Since the September 19 coup d'etat, Thai public figures have haphazardly indicated various possible grounds for the prosecution of deposed Prime Minister Thaksin Shinawatra. It remains unclear which of Thaksin's alleged offenses can provide the basis for his future exclusion from political life, which some in the current administration appear to see as a precondition for returning to normalcy. Offenses that government officials have considered pursuing include:

- Involvement in the disappearance of Muslim lawyer Somchai Neelaphaijit and other extra-judicial killings;
- Instituting an illegal government lottery; and
- Facilitating the purchase of government land by Thaksin's wife at a below-market price.

Despite public statements by various officials on the above and other offenses, such as tax evasion by Thaksin's close relatives, the government has yet to make public strong evidence of Thaksin's direct involvement in illegal conduct. Thaksin's lawyer told us privately that the land purchase may present the greatest threat to Thaksin. Thailand's Constitutional Tribunal, ruling on charges of fraud in the April 2006 election, may dissolve the Thai Rak Thai party and determine Thaksin is ineligible to stand for election for a five year period, but it is unclear whether such a ruling would leave the coup leaders feeling they can safely permit Thaksin's return to Thailand. Despite the eagerness to find a basis for Thaksin's prosecution, we have not seen that the former Prime Minister has been denied due process. End Summary.

PROSECUTION PROVES TOUGHER THAN COUP

[1](#)2. (U) When top military officers seized power on September 19, they cited social divisions, corruption, politicization

of independent agencies, and lese majeste as factors motivating their coup d'etat. In November, the Thai authorities issued a white paper with a longer list of reasons for overthrowing Thaksin, ranging from human rights abuses to "conversion of mobile phone concession royalties into excise tax." Investigative bodies have begun scrutinizing Thaksin-era government practices.

13. (C) Various contacts have described top officials as worried if not outright paranoid about Thaksin continuing to exert influence in Thailand, and perhaps staging a political comeback in the near future. Talk of "undercurrents" against the government continues, as martial law remains in place. Blunders such as the sudden imposition of capital controls (ref A) surely contribute to the insecurity of Thailand's current leadership. (Some speculated Thaksin might somehow have exacerbated the December 19 plunge in the stock market.)

14. (C) A strong legal indictment against Thaksin would help reassure the coup leaders that they could ease political controls and transition to democratic governance without having to worry about Thaksin returning and wreaking vengeance. So far, however, the government has criticized its predecessor's policies and hinted at legal culpability without presenting publicly an evidentiary basis for charging the former Prime Minister. It is noteworthy that, while the government aggressively seeks a basis for Thaksin's prosecution, there are no indications that government officials are fabricating charges or otherwise denying him and his associates due process -- despite eagerness from many quarters to see Thaksin "held accountable" for the "excesses of his administration." On the contrary, one of the biggest

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complaints against the current government is that it has been too slow to hold Thaksin accountable for the transgressions which he is widely believed to have committed.

EXTRA-JUDICIAL KILLINGS

15. (U) The most serious charges floated against Thaksin link the former Prime Minister to extra-judicial killings by the security forces. In November, Somchai Homlaor, Vice Chairman of a National Human Rights Commission subcommittee on legal affairs and disappearances, revived criticism of the 2003-2005 anti-drug campaign, during which thousands of people died violent deaths at the hands of either the authorities or fellow criminals. Somchai, along with former Senator Kraissak Choonhavan, called publicly for Thailand to ratify the Rome Statute of the International Criminal Court, so that Thaksin might be tried for crimes against humanity.

16. (C) In December, Justice Minister Charnchai Likhitjitta told the Ambassador that his Ministry had a limited capacity to investigate killings that took place during the anti-drug campaign. Days later, following a meeting chaired by Prime Minister Surayud Chulanont, the Department of Special Investigations (DSI) determined it would establish special teams to examine four select cases involving the deaths or disappearances of people seemingly unconnected to the narcotics trade. It appears highly unlikely that these investigations will uncover evidence implicating Thaksin. (Note: During Thaksin's time in office, the Embassy repeatedly expressed concern to top level RTG officials, including Thaksin himself, over the perception that the RTG systematically carried out extra-judicial killings -- see, for example, refs D and E. End Note.)

17. (SBU) Critics have also accused Thaksin of involvement in the 2004 disappearance of Muslim lawyer Somchai Neelaphaijit. On October 31, Council for National Security Chairman Sonthi Boonyaratglin told the press that he had "received information from investigators that some individuals close to former Prime Minister Thaksin were behind the disappearance

of Somchai." Days later, the Office of the Attorney General announced that it had evidence that Somchai "may have died," and that suspects in the case would be charged with murder. In response, Somchai's widow called for investigators to delay issuing arrest warrants, expressing concern that rushing ahead without adequate evidence would make it impossible to secure convictions. Since then, the Somchai case has faded from the headlines.

GOVERNMENT-RUN LOTTERY

¶8. (U) In 2003, the Thaksin administration issued a cabinet resolution that established a government-run lottery program. In late November, Finance Minister Pridiyathorn Devakula, when advocating new legislation to regulate government lottery programs, argued that Thaksin and his cabinet had violated the Government Lottery Act by introducing the lottery through a cabinet resolution, rather than a law. Consequently, Thaksin and his ministers could face criminal charges, Pridiyathorn threatened.

¶9. (C) Thaksin-era Finance Minister Suchart Jaovisidha, citing clearance from government lawyers, said in mid-December that the cabinet had made "an honest mistake" by initiating the lottery program without a legal basis. Nevertheless, it is difficult to envision the government zealously prosecuting Thaksin on related charges. First, the lottery program was genuinely popular, both with those who play the lottery and with the organizations for disabled persons, since people with disabilities often make a living as ticket vendors. Second, there was compelling logic behind the scheme -- that the government should capture revenues that otherwise would go to underground lottery operators. Third, it is difficult to link the government's establishment of the government lottery program to Thaksin's personal financial interests. (By contrast, some have told us that the current suspension of the government lottery is enriching the underground operators, who -- like many in organized crime -- may be presumed to have ties to officials in the security forces.) However, there have been concerns expressed that the monies raised through the government lottery program were not properly accounted for and comprised

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a slush fund of sorts for political purposes. At this point, though, we are not aware of serious efforts to investigate the use of these funds.

¶10. (C) After blasting Thaksin, Pridiyathorn lost face when the government's bill encountered vocal opposition in the National Legislative Assembly, and he withdrew the draft law. Given the political firestorm that this issue sparked, few officials -- politicians or prosecutors -- may be eager to involve themselves with it.

LAND PURCHASE

¶11. (U) The Asset Examination Commission (AEC) has begun examining dozens of transactions that may involve Thaksin-era corruption. The case that may pose the most direct threat to Thaksin involves the 2003 purchase for 772 million Baht (approximately 19 million USD) of land by Thaksin's wife, Potjaman. Potjaman purchased the land from the Financial Institutions Development Fund (FIDF), an independent agency created by the Bank of Thailand to assume the cost of nonperforming assets, among other functions.

¶12. (U) AEC members have assessed that the land purchase violated the 1999 Counter Corruption Act, which prohibits state officials and their spouses from entering into contracts with the state agencies over which they have authority. Violations are punishable by up to three years' imprisonment. However, Noppadol Pattama, Thaksin's lawyer and unofficial spokesman, has publicly disputed the idea that

the Prime Minister had formal authority over the FIDF. On December 25, an AEC spokesman expressed the opinion that Thaksin acted improperly in this case, and the AEC would take legal action if requested by the FIDF.

¶13. (C) When we met recently with Noppadol, he told us he was devoting resources to countering all the charges that have been floated publicly (creating an illegal lottery, extrajudicial killings, etc.). He acknowledged, however, that prosecution for the land purchase represented the most serious threat. Because the Counter Corruption Act was relatively recent, the concept of authority in this law's context remained unclear. The criteria employed by the courts would be extremely subjective, Noppadol said.

TAX EVASION

¶14. (U) Meanwhile, the AEC has indicated that Thaksin's children (Panthongtae and Pinthongta), and his wife's step-brother, evaded taxes on large transactions. When the Shinawatra family arranged its politically disastrous sale of Shin Corp to Singapore's Temasek Holdings, Thaksin's two children purchased a total of 329 million shares of Shin Corp stock from an offshore holding company for 1 Baht each, then resold those shares to Temasek for over 49 Baht apiece, with no tax liability. (Ref C reported this transaction, and the applicability of RTG tax laws, in greater detail.) With a new determination that these profits should be subject to taxation, the two may face a combined tax bill of over 160 million USD.

¶15. (U) In the case of Bannapot Damapong, Potjaman Shinawatra's stepbrother, the AEC skeptically challenged the claim that Potjaman's maid in 1997 provided Bannapot with corporate shares worth 738 million Baht (over 18 million USD) as a tax-free gift. (Note: The Shinawatras appeared to have placed substantial assets in the names of their domestic employees in order to conceal their wealth. The Constitutional Court, in a controversial 2001 ruling, acquitted Thaksin on charges of asset concealment, however. End Note.) The AEC determined Bannapot had to pay 273 million Baht in back taxes, with an additional 273 million in penalties, totaling approximately 15 million USD.

¶16. (U) In his defense, Bannapot explained that he had received a letter from the Finance Ministry exempting him from taxation on the above transaction. Investigators confirmed the letter was authentic and, consequently, determined that Finance Ministry Revenue Department Director General Sirote Swasdipanich and four others should face criminal and disciplinary charges.

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¶17. (C) Noppadol, Thaksin's lawyer, told us that both Bannapot and Thaksin's children are prepared to provide bank guarantees to cover their tax liabilities in the above cases, although they also plan to exhaust all available appeals. While these tax evasion cases are unlikely to provide a legal basis for a case against Thaksin, they would seem to provide substantial leverage in the event that Thailand's current leaders decide to negotiate a deal with the deposed Prime Minister.

THAI RAK THAI UNDER FIRE

¶18. (C) The September 19 coup leaders surely hope to find a basis for filing criminal charges against Thaksin. However, a less powerful but still significant step would entail stripping Thaksin of political rights. Even prior to the coup, the Office of the Attorney General had recommended that the Constitutional Court dissolve Thaksin's Thai Rak Thai party (TRT) for fraudulently promoting weak competitors in April's election. (Ref B explains TRT's motive for doing

so.) This case is proceeding under the newly established Constitutional Tribunal. After seizing power, the coup leaders announced that members of the executive board of a party subject to punitive dissolution would lose their voting rights for a five year period. (The 1997 Constitution disallowed those without voting rights from election to parliament, and, therefore, from cabinet positions as well. We suspect the next constitution will also contain similar provisions.)

¶19. (C) Stripping Thaksin of his voting rights should impede his ability to regain high political office, although the ex post facto nature of the coup leaders' revised penalties could be subject to legal challenge under a more accommodating successor government. Also, Thaksin's continuing popularity in certain areas and his immense wealth would enable him to pose an extremely significant political threat to the coup leaders, even if he were subject to a formal ban on holding political office. Thus, the Constitutional Tribunal's ruling against TRT would fall short of providing Thailand's current leaders with the same sense of security that they might feel if Thaksin's options were either to remain abroad or sit in a Thai prison cell.

OUTLOOK -----

¶20. (C) Now more than three months since the coup d'etat, the interim administration has yet to pull together a strong legal case against Thaksin. Although the former Prime Minister demonstrated a penchant for arrogant and impolitic statements, it appears he was quite clever and sophisticated in his financial arrangements, and government sources acknowledge it will be difficult to find clear evidence of corruption. The case with the best prospects for success -- the land deal -- may bog down in the courts for an extended period. We strongly doubt Thaksin can be proven to have orchestrated extra-judicial killings, the most serious charge against him. But Thailand's current leaders are well aware that, in the face of increasing criticism over their ability to run the country, a successful prosecution (or even just a compelling indictment) against Thaksin would bolster their legitimacy and popularity.

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